

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-6143

GARY HENRY X BROWN,

Plaintiff - Appellant,

versus

RON ANGELONE; D. SWISHER; P. MUELLER; A. V.
DEOLA; COUNSELOR NEALY; JACK LEE; SERGEANT
SHORT; CHERYL MILLER; R. MILLER; S. MURPHY,

Defendants - Appellees.

Appeal from the United States District Court for the Western Dis-
trict of Virginia, at Roanoke. James C. Turk, District Judge.
(CA-95-1390-R)

Submitted: May 16, 1996

Decided: June 5, 1996

Before RUSSELL, LUTTIG, and WILLIAMS, Circuit Judges.

Affirmed in part and dismissed in part by unpublished per curiam
opinion.

Gary Henry X Brown, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order dismissing without prejudice his 42 U.S.C. § 1983 (1988) complaint claiming due process and equal protection violations. We have reviewed the record and the district court's opinion and find no reversible error. We affirm the portion of the district court's order dismissing the due process claims on the reasoning of the district court. Brown v. Angelone, No. CA-95-1390-R (W.D. Va. Dec. 29, 1995).

The district court's dismissal without prejudice of the equal protection claim is not appealable. See Domino Sugar Corp. v. Sugar Workers' Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). A dismissal without prejudice is final if "no amendment [in the complaint] could cure defects in the plaintiff's case." Id. at 1067 (quoting Coniston Corp. v. Village of Hoffman Estates, 844 F.2d 461, 463 (7th Cir. 1988)). In ascertaining whether a dismissal without prejudice is reviewable in this court, the court must determine "whether the plaintiff could save his action by merely amending his complaint." Id. at 1066-67.

Appellant could amend his equal protection claim to assert that persons similarly situated to himself were treated differently, and include specific examples of the differential treatment. Accordingly, we dismiss this portion of the appeal for lack of jurisdiction because we find the dismissal without prejudice of the equal protection claim is not appealable.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART